IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1632 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESHKUMAR KANTILAL PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1632 of 2002

TANNA ASSOCIATES for Petitioner No. 1

MS HARSHA DEVANI, AGP Respondents No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/02/2002

ORAL JUDGEMENT

#. The father of the petitioner was working as Radio Operator in the State service. While in service, he died on 15.5.1998. After his death, the petitioner, who is

the son of the deceased employee, applied for compassionate appointment. However, by order dated 7.12.1999 the petitioner was informed that since the monthly income of the family of the deceased is Rs.3594/-, his case cannot be considered for compassionate appointment as the income of the family of the deceased is more than the prescribed limit of Rs.2500/-.

#. However, in view of various decisions of this court, while calculating the income of the family of the deceased, family pension income is not required to be considered, copy of one of such judgment is produced on record.

#. Ms.Devani, learned AGP, pointed out that the impugned order is passed in 1999 and the petition is filed after the period of more than 2 years. It is no doubt true that there is a delay in approaching this Court, but so far as the department is concerned, the petitioner had applied for compassionate appointment within the prescribed time. In that view of the matter and in view of the fact that, in view of various decisions of this Court to the effect that pensionary income should not be taken into consideration at the time of fixing the quantum of income of the family of the deceased, I remand this matter to the Director General of Police respondent No.1 to take fresh decision accordingly in this connection. While taking such decision, family pension income which the family of the deceased is receiving may not be taken into consideration and the matter may be decided taking into consideration all other points in accordance with law within a period of three months from the date of receipt of the writ of this Court. It is clarified that, this court has not expressed any opinion one way or the other so far as the merit of the case is concerned. The petition is partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)